UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/716,967
Filing Date: November 19, 2003
Appellant(s): ADAMCZYK ET AL.

Elizabeth A. Stanek
Reg. No. 48,568
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 28, 2008 appealing from the Office

action mailed February 6, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6792457	Zhang et al.	9-2004
7073055	Freed et al.	7-2006

DSL Evolution - Architecture Requirements for the Support of QoS-Enabled IP Services, WT-081, Straw Ballot Revision (8), March 2003, pp 1-46.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5, 9-14, 18-22, and 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over DSL Forum WT-081 Revision 8 (Applicant's IDS) in view of Freed (7073055).

Regarding claims 1, 10, 18, and 26, the DSL Forum teaches a method of managing Quality of Service (QoS) and/or bandwidth allocation in a Regional/Access Network (RAN) having a broadband access server (BRAS) (Page 20, Figure 20) that provides end-to-end transport between a Network Service Provider (NSP) and/or an Application Service Provider (ASP) (Page 28, Figure 19), and a Customer Premises Network (CPN) that includes a Routing Gateway (RG) (Page 21, Figure 14) wherein the RAN comprises a digital subscriber link (DSL) network (Page 32, Figure 21); wherein the DSL network further includes a Network Interface Protocol Handler, a DSL Service Manager, and a DSL Session Data Store; and wherein receiving a service session request from the NSP and/or the ASP comprises receiving the service session request at the Network Interface Protocol Handler (Page 32, under the characteristics section, it teaches that the BRAS receives communications from the service providers, manages QoS, and stores profiles in the policy repository).

The DSL Forum does not explicitly indicate receiving at the RAN, a service session request from the NSP and/or the ASP including a request to establish or

terminate a communication session, the NSP and/or ASP being associated with a service provider record;

authenticating the NSP and/or the ASP based on information contained in the service provider record to provide an authentication result or a termination result; and

transmitting from the RAN, the authentication result or the termination result to the NSP and/or ASP.

Freed teaches a Service network (Abstract) that includes a DSL connection (Column 7, lines 12 – 14) which teaches receiving at the RAN, a service session request from the service provider including a request to establish or terminate a communication session (Column 13, lines 49 – 53), the service provider being associated with a service provider record (Column 13, lines 22 – 26);

authenticating the service provider based on information contained in the service provider record to provide an authentication result or a termination result (Column 13, lines 55 – 59); and

transmitting from the RAN, the authentication result or the termination result to the service provider (Column 14, lines 9 – 14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Freed's teaching of using the service provider's to set up communication sessions in the DSL Forum's network in order to allow the service provider to set up the necessary resources for the customer premises network.

Regarding claims 3, 12, 20, and 28, DSL forum teaches the method of claims 1, 10, 18, and 26.

The DSL Forum does not explicitly indicate wherein the service session request comprises an establish service session request and wherein authenticating further comprises: forwarding from the Protocol Handler, the establish service session request to the to the DSL service manager; querying from the DSL service manager, the DSL Session Data Store to obtain the service provider record based on a service provider identifier; validating at the DSL service manager, service provider credentials in the obtained service provider record; and generating the authentication result responsive to the validation of the service provider credentials.

Freed teaches that the RADIUS server receives the service provider requests, manages those requests, queries the session profiles, validates the request and generates the results (Column 13, line 49 – Column 14, line 14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Freed's teaching of how to handle the service provider request at the server in the DSL Forum in order allow the server to validate the request before allocating the requested resources.

Regarding claims 4, 13, 21, and 29, the DSL Forum teaches the method of claims 3, 12, 20, and 28.

DSL forum does not explicitly indicate wherein transmitting the authentication result further comprises: transmitting from the Protocol Handler, a valid authorization code to the NSP and/or the ASP if the service provider credentials are validated at the DSL service manager; and transmitting from the Protocol Handler, an invalid

authorization code to the NSP and/or the ASP if the service provider credentials are not

validated at the DSL service manager.

Freed teaches transmitting from the Protocol Handler, a valid authorization code

to the NSP and/or the ASP if the service provider credentials are validated at the DSL

service manager; and transmitting from the Protocol Handler, an invalid authorization

code to the NSP and/or the ASP if the service provider credentials are not validated at

the DSL service manager (Column 14, lines 8 – 17).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to use Freed's teaching of how to handle the service provider

request at the server in the DSL Forum in order allow the server to validate the request

before allocating the requested resources.

Regarding claims 5, 14, 22, and 30, The DSL forum teaches the method of

claim 4.

The DSL forum does not explicitly indicate wherein the authentication result is

included in a establish service session response from the RAN to the NSP and/or the

ASP and wherein the establish service session response is transmitted from the

Protocol Handler to the NSP and/or the ASP.

Freed teaches that the authentication result is included in a establish service

session response from the RAN to the NSP and/or the ASP and wherein the establish

service session response is transmitted from the Protocol Handler to the NSP and/or

the ASP (Column 14, lines 8 – 17).

Regarding claim 9, The DSL Forum teaches the method of claim 1 wherein the

service provider record comprises a service provider record maintained at the NSP that

identifies the NSP, a service provider record maintained at the ASP that identifies the

ASP and/or corresponding service provider records maintained at the RAN that identify

the NSP and/or the ASP (Page 32, under the characteristics section).

Claims 6-8, 15-17, 23-25, and 31-33 are rejected under 35 U.S.C. 103(a) as

being unpatentable over The DSL Forum in view of Freed, and further in view of

Zhang (6792457).

Regarding claims 6, 15, 23, and 31, The DSL forum teaches the method of

claims 2, 11, 19, and 25.

The DSL forum and the reference, Freed only discloses that the requests being

authenticated by the Radius servers are for initiating sessions.

Zhang teaches the system of using requests from the service provider for both

requesting sessions and closing sessions that are active (Column 6, lines 20 – 30;

Column 7, lines 6 – 20; Column 8, lines 31 – 40).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to use Zhang's teaching in the DSL forum network in order to

ensure that the open sessions are closed and the resources can get reallocated.

Regarding claims 7, 16, 24, and 32, The DSL Forum teaches the method of

claims 6, 15, 23, and 31.

The DSL Forum does not explicitly indicate releasing session resources associated with the terminated communication session.

Zhang teaches releasing session resources associated with the terminated communication session (Column 7, lines 1 – 20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Zhang's teaching in the DSL forum network in order to ensure that the open sessions are closed and the resources can get reallocated.

Regarding claims 8, 17, 25, and 33, The DSL forum teaches the method of claims 6, 15, 23, and 31.

The DSL Forum does not explicitly indicate wherein transmitting the termination result comprises transmitting a terminate service session response from the Protocol Handler to the NSP and/or the ASP.

Freed teaches that the Radius server sends the response to the service provider for requests issued (Column 14, lines 9 – 14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Freed's teaching of using the service provider's to set up communication sessions in the DSL Forum's network in order to allow the service provider to set up the necessary resources for the customer premises network.

(10) Response to Argument

The appellant argues that the combination of DSL Forum and Freed would not suggest the claim limitations because Freed teaches a cable network instead of a DSL network system and thus no combination would between the two would lead towards the claimed invention. See July 28, 2008 Appeal Brief, pgs 8-9.

The examiner disagrees:

The examiner disagrees with the applicant's assertion that cable and DSL network are non-analogous and that the references are not combinable. One of ordinary skill working with a DSL network to provide services to a like, like the one taught in the DSL forum, would be motivated to look to improvements made to cable systems' service providers for teaching and suggests to improve the DSL network. That person of ordinary skill is able to take the suggestions of the cable networks then apply the improvements in the DSL environment using the existing service providers of the DSL network.

DSL Forum is discloses a way of providing network services in a DSL network. *See* Abstract, pg 1. DSL Forum further discloses that service providers (ASP and NSP) operate to request services in the DSL network. *See* pg 32. DSL Forum only lacks explicit disclosure of the operation of the service provider in the claim invention as described in the rejection to the claim.

Freed teaches providing user's with networks services using a service provider. *See* Col. 13, lines 4 – 16. That service provider performs the functions that DSL lacking as described in the grounds of rejection in this appeal brief. One of ordinary skill in the

art would be able to apply the operation of the service provider in Freed into the service providers of DSL Forum to provide that functionality as part of the DSL network described in DSL forum.

Furthermore Freed, while providing teaching that cable modem networks are the preferred system teaches that a DSL environment is available in an embodiment of Freed's system. *See* Col. 7, lines 6 - 14. There is no disclosure in Freed that the teachings of any of the features cannot or should not be applied to a DSL network, but instead teaches in embodiment in which Freed's system does operate in a DSL network.

The appellant argues that the combination of DSL Forum and Freed does not teach or sugges tall the limitations of claim 1 because there is no disclosure towards providing a termination result. See July 28, 2008 Appeal Brief, pg 9.

The examiner disagrees:

Claims 1, 10, 18, and 26 clearly indicate that the service record provides "an authentication result or a termination result." See July 28, 2008 Appeal Brief, pg 13-19. The combination of DSL Forum and Freed discloses providing an authentication result, thus is not required to teach a termination result to teach the claimed invention.

The appellant argues that there would be no motivation to combine DSL Forum

and Freed because of the different network environments and that Freed teaches away

from DSL networks. See July 28, 2008 Appeal Brief, pg 9.

The examiner disagrees:

As already described previously, DSL networks and Cable networks are very

analogous arts and improvements for one network can often also be applied to

improvements to the other. In this case DSL Forum's disclosure is lacking any teaching

of how the service providers operate to establish individual customer's service in the

network. Freed teaches one way for service providers to request necessary resources

for a customer within the network. One operating DSL Forum's system would be

motivated to use Freed's teaching to provide the same type of resource allocation and

customer authentication in the DSL forum's network to ensure that those resources are

available for a customer utilizing the network services.

Furthermore, as described previously, Freed does not in fact teach away from

providing those teachings to DSL networks, but in fact teaches an embodiment where

they are in fact applied to DSL networks.

Regarding claims 3 and 6, the applicant argues that Freed and Zhang do not

teach the specifics of the DSL system that are required by the claimed limitations. See

July 28, 2008 Appeal Brief, pg 10-11.

The examiner disagrees:

Freed and Zhang are not being relied upon to teach the specifics of a DSL

system. The DSL network is known in the art and described in detail in DSL Forum.

Freed and Zhang are applied to teach the improved functionality of similar systems in

the network, which when applied to the specific DSL network as taught in DSL Forum,

the combination would teach the same operation and functionality of the claimed

limitations.

Regarding claim 6, the applicant argues that the combination of DSL Forum,

Freed, and Zhang would only be made in hindsight, thus is an improper combination.

See July 28, 2008 Appeal Brief, pg 11.

The examiner disagrees:

The applicant is reminded that the examiner's conclusion of obviousness is

based upon improper hindsight reasoning, it must be recognized that any judgment on

obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning.

But so long as it takes into account only knowledge which was within the level of

ordinary skill at the time the claimed invention was made, and does not include

knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper.

See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In this case, DSL Forum provides only a bare bones description of an operation

of a DSL system, one of ordinary skill would be forced to go and attempt to fill in the

structure and operation of the DSL system to better operate and improve the basic

system. Freed and Zhang provide teachings involved in a similar field of endeavor that

provide more complete descriptions about providing customer services. One of ordinary

skill would be able and motivated to use the prior art teaching of Freed and Zhang to

help produce and improve the DSL system described in the DSL Forum.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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